

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

EMILY SEARS, et al.

**Plaintiff(s),**

RUSSELL ROAD FOOD AND BEVERAGE, LLC, et al.,

Defendant(s).

Case No.: 2:19-cv-01091-APG-NJK

## ORDER

(Docket No. 41)

Pending before the Court is the parties' motion to temporarily stay proceedings. Docket 1. Specifically, the parties ask to stay discovery pending decisions on Defendants' motions to dismiss "and/or resolution of the COVID-19 [ ] issues." *Id.* at 2. The parties ask for a "stay of at forty-five [ ] days, or pending the rulings on the motions to dismiss, and/or whatever time the Court deems fair for the Parties." *Id.* at 5.

The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). “The mere fact that parties stipulate to a stay does not limit the Court’s discretion to order a stay.” *Estate of Evans v. Kinecta Fed. Credit Union*, 2014 WL 12790972, at \*1 (D. Nev. June 27, 2014). “The Federal Rules of Civil Procedure do not provide for automatic or blanket stays of discovery when a potentially dispositive motion is pending.” *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). Discovery should proceed absent a “strong showing” to the contrary. *See, e.g., Turner Broadcasting Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997).

The case law in this District makes clear that requests to stay discovery may be granted when: (1) the pending motion is potentially dispositive; (2) the potentially dispositive motion can be decided without additional discovery; and (3) the Court has taken a “preliminary peek” at the merits of the potentially dispositive motion and is convinced that the plaintiff will be unable to

1 state a claim for relief. *See Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).<sup>1</sup>  
2 When stipulating to a stay of discovery, the parties have the burden to show that discovery should  
3 be stayed. *See Kabo Tools Co. v. Porauto Indus. Co.*, 2013 WL 5947138, at \*1 (D. Nev. Oct. 31,  
4 2013).

5 The Court finds that all the standards are not met; therefore, a stay of discovery based on  
6 the pending motions to dismiss, Docket Nos. 14, 16, is inappropriate here. The Court finds that  
7 the motions to dismiss are potentially dispositive and that they can be decided without discovery.  
8 The Court is not convinced, however, that the motions to dismiss “will prevail, and therefore,  
9 discovery [would be] a waste of effort.” *Trazaska v. Int’l Game Tech.*, 2011 WL 1233298, at \*3  
10 (D. Nev. Mar. 29, 2011). Accordingly, the Court will deny in part the parties’ instant motion as  
11 to the pending motions to dismiss as a basis for a stay of discovery.

12 The parties also submit that COVID-19 has “infringe[d] on [their] ability to conduct and  
13 meaningfully participate in the discovery process[.]” Docket No. 41 at 9. Specifically, the parties  
14 submit:

15 At least two of the Plaintiffs were scheduled to attend their  
16 depositions in person, and now have significant fears about traveling  
17 to Las Vegas, Nevada from their respective homes in Southern  
18 California and England, and even yesterday the United States  
19 government suspended travel to the United States from Europe.  
20 Plaintiff Davalos is approximately nine (9) months pregnant and has  
21 already been placed on travel restrictions from a physician, and as  
22 such she was already restricted in having her deposition taken in the  
23 allotted time frame in Nevada. Further, the remaining Plaintiffs are  
24 also from different states, outside of Nevada. Defendant wishes to  
25 take the in-person videotaped depositions of Plaintiffs in Las Vegas,  
26 Nevada, the Plaintiffs’ chosen venue. However, numerous entities  
27 are now cancelling events, restricting travel, and recommending  
28 persons to stay at home in isolation, including the Center for Disease  
Control, thereby making depositions in-person or by any means,  
significantly impeded.

25  
26 <sup>1</sup> Conducting the preliminary peek puts the undersigned in an awkward position because  
the assigned district judge who will decide the motion to dismiss may have a different view of its  
27 merits. *See Tradebay*, 278 F.R.D. at 603. The undersigned’s “preliminary peek” at the merits of  
that motion is not intended to prejudice its outcome. *See id.* As a result, the undersigned will not  
discuss the merits of the pending motion to dismiss here. Still, the undersigned has carefully  
28 reviewed the arguments in the motion to dismiss and later briefing.

1 *Id.* Due to the parties' infringed ability to meaningfully participate in the discovery process  
2 because of COVID-19, the Court will grant in part the parties' instant motion as to this basis for a  
3 stay of discovery.

4 For the reasons stated above, the Court **GRANTS** in part the parties' instant  
5 motion. Docket No. 41. Discovery in this case is stayed until, April 27, 2020, forty-five days  
6 from this order. No later than April 30, 2020, the parties shall submit a joint proposed  
7 discovery plan for the remainder of discovery in this case.

8 IT IS SO ORDERED.

9 Dated: March 13, 2020

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11 Nancy J. Koppe  
12 United States Magistrate Judge  
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